IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.274 OF 1997

The Commissioner of Income Tax ..Applicant.

V/s.

Dr.Berck & Co. (India) Ltd. ..Respondent.

Mr.A.S. Rao for applicant.

Ms.Aarti Sathe for respondent.

CORAM : Dr.S.RADHAKRISHNAN & J.P.DEVADHAR, JJ.

DATED : 17TH JANUARY, 2006.

P.C. :-

. Heard learned counsel for the applicant and the respondent. In the above application, the following substantial questions of law have been raised :-

1) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that repairs to guest house would fall under a specific provisions viz.sec.37 (1) of the I.T. Act and no recourse should be made to section 37(4) of the Act ?

2) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in allowing the entire initial contribution to supperannuation fund at Rs.49,765/- as against 1/5th of 80% of said amount allowed by the assessing officer ?

2. Both the counsel for the applicant and respondent agree that as far as question No.1 is

concerned, the same is squarely covered in favour of the Revenue and against the assessee by the decision of the Apex Court in the case of **Britania Industries V/s. C.I.T.** reported in **278 of I.T.R. 546.** Accordingly, the question No.1 is answered in favour of the Revenue and against the assessee.

3. So far as second question is concerned, both the learned counsel agree that the issue is squarely covered by the Judgment of the Supreme Court in the case of **C.I.T. V/s. Sirpur Paper Mills** reported in **237 I.T.R. 41** in favour of the assesee. Accordingly, the question No.2 is answered in favour of the assessee and against the Revenue.

4. Accordingly, the application stands disposed of with no order as to costs.

(Dr.S.RADHAKRISHNAN,J.)

(J. P. DEVADHAR, J.)